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No. 8] NEW DELHI, SATURDAY, JANUARY 14, 1956

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 26th December 1955

S.R.O. 123.—Whereas the election of Shri K. G. Palaniswami Gounder as a member of the Legislative Assembly of the State of Madras, from the Kangayam Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of People Act, 1951 (XLIII of 1951), by Shri A. K. Subbaroya Gounder son of Shri Krishnaswami Gounder, Avanashipalayampudur Post, *via* Kangayam, Erode;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, COIMBATORE

PRESENT

Sri E. Anthony Lobo, M.A. (Oxon.), Bar-at-law, *Chairman*.

Sri R. Rajagopala Iyer, B.A., B.L., *Judicial Member*.

Sri K. Nanjundiah, B.A., B.Com., B.L., *Advocate Member*.

Tuesday, the 15th day of November 1955

ELECTION PETITION No. 1 OF 1954

BETWEEN

Sri A. K. Subbaraya Gounder—*Petitioner*.

AND

1. Sri K. G. Palanisami Gounder,
2. Sri G. D. Naidu,
3. Sri M. S. Chellappa Gounder,
4. Sri S. Ramaiah Pillai,
5. Sri V. Muthuswamy Gounder,
6. Sri S. Chinnaswami—*Respondents*.

This petition coming on for hearing on 23-9-54, 24-9-54, 14-10-54, 5-11-54, 6-11-54, 8-11-54, 15-11-54, 25-11-54, 26-11-54, 12-12-54, 14-12-54, 15-12-54, 10-1-55, 11-1-55, 12-1-55, 7-2-55, 8-2-55, 9-2-55, 24-2-55, 25-2-55, 9-3-55, 10-3-55, 11-3-55, 21-3-55, 22-3-55, 23-3-55, 9-4-55, 11-4-55, 12-4-55, 15-7-55, 16-7-55, 21-7-55, 22-7-55, 11-8-55, 12-8-55, 13-8-55, 24-8-55, 25-8-55, 26-8-55, 27-8-55, 30-8-55, 14-9-55, 15-9-55, 16-9-55, 3-10-55, 4-10-55, 5-10-55 and 17-10-55 before us in the presence of Sri C. P. Meenakshisundara Shastriar and Sri M. Jagadeesan, Advocates for the

Petitioner and of Sri C. S. Balakrishna, K. M. Santhanagopal and Sri S. Ramachandra Iyer, Advocates for the 1st respondent and the other respondents remaining *ex parte* and having stood over to this day for consideration, the Tribunal passed the following:—

ORDER

This petition is one under Sections 80 and 81 of the Representation of the People Act, 1951, to set aside the election of the 1st Respondent and to declare the petitioner to have been duly elected. There was a bye-election for the Kangayam Constituency of the Madras Legislative Assembly on 8th November, 1953. The petitioner and the six respondents filed their nominations for the said election. The nomination paper of the 4th respondent was rejected by the Returning Officer, and respondents 2, 3, 5 and 6 withdrew their candidature. The contest was therefore solely between the petitioner and the 1st respondent, and the latter obtained 14,961 votes while the former got 14,950 votes. The 1st Respondent thus won the election by a margin of 11 votes and was declared to have been duly elected. The petition alleges (a) that there have been several instances of false personation (particulars of which are furnished in lists A, B and C appended to the petition) that they were at the instigation or with the connivance of the 1st Respondent or his agents as mentioned in lists A to C, (b) that the 1st Respondent caused to be published false and malicious statements concerning the character and conduct of the petitioner, in a weekly called the 'Idhi', which publication greatly prejudiced his chances of success at the election and (c) that the 1st Respondent was guilty of hiring and procuring vehicles (mentioned in List E) for the conveyance of electors to and from the polling stations. There are besides the usual allegations of bribery and treating of voters. The petitioner accordingly seeks a declaration that the election of the 1st Respondent is void and claims the seat for himself on the ground that he has secured the majority of the valid votes.

2. The 1st Respondent who is the sole contesting party denies the various allegations contained in the petition. He has also filed a petition under Section 97 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) alleging (a) that the petitioner is guilty of instigation of false personation of deceased voters (particulars of which are mentioned in List A to his petition), (b) that one L. T. Ramaswami Gounder, acting Village Munsif of Kadayur openly canvassed on behalf of the petitioner and brought to bear undue influence on the voters specified in List B and intimidated them with the knowledge and connivance of the petitioner, (c) that bribery was practised on a considerable scale by the petitioner or his agents, particulars whereof are specified in List C and (d) that the petitioner caused to be published printed leaflets containing false and malicious statements in relation to the character and conduct of the 1st Respondent and reasonably calculated to prejudice the prospects of his success in the election. The 1st Respondent would therefore urge that, in any event, the petitioner is not entitled to the seat.

3. On these allegations, the following issues were framed by the Tribunal:—
Issues in Election Petition No. 1 of 1954:

- (1) Whether there was false personation in respect of voters mentioned in List A, A supplemental, B and C appended to the petition, and whether the petitioner is entitled to rely on the instances referred to in the supplemental List A?
- (2) Whether there was any hiring or procuring of vehicles mentioned in the List E appended to the petition for the conveyance of electors to or from any Polling Station?
- (3) Whether the acts referred to in issue Nos. 1 and 2 were done by the 1st Respondent or his agents or by any other person at the instance or connivance of the 1st Respondent or that of his agents?
- (4) Whether the 1st Respondent or his agents or any other person acting with the connivance of the 1st Respondent or his agents are guilty of having published false statements in the 'Idhi' within the meaning of Section 123(5), Representation of People Act, 1951?
- (5) Whether the Election of the 1st Respondent is void by reason of the aforesaid corrupt practices?
- (6) Whether the petitioner would have received a majority of the valid votes but for the votes obtained by the 1st Respondent as a result of the aforesaid corrupt practices?

(7) Whether the petitioner is entitled to be declared as having been duly elected?

(8) To what relief is the petitioner entitled?

Issues in Recriminatory Petition:

- (1) Whether there has been false personation of the voters mentioned in List A appended to the Recriminatory Petition?
- (2) Whether there was bribery in relation to the voters as set out in List C appended to the Recriminatory Petition?
- (3) Whether the alleged corrupt practices referred to in issue Nos. 1 and 2 were done by the petitioner—1st Respondent or his agents or by any other person with the connivance of the petitioner—1st Respondent or his agents?
- (4) Whether the petitioner—1st Respondent or any other person at the connivance of the petitioner—1st Respondent published printed leaflets, copy of which is attached to the Recriminatory Petition addressed to the voters of the Kangayam Constituency containing statements which amount to false statements within the meaning of Section 123(5) of the Representation of the People Act, 1951?
- (5) Whether the Public Servant referred to in the List B appended to the Recriminatory Petition canvassed votes for the petitioner—1st Respondent?
- (6) Whether the said Public Servant exercised undue influence or intimidated voters mentioned in the List B on behalf of the petitioner—1st Respondent and with his knowledge and connivance or that of his agents?
- (7) Is the petitioner—1st Respondent in any event not entitled to the declaration prayed for by him?

4. After the trial of the petition had commenced and the marking of documents (by consent), had been completed, the 1st Respondent came forward with an application (I.A. No. 4 of 1954) on 11th October, 1954 alleging that the main petition was defective for want of necessary particulars and should therefore be dismissed *in limine*. That application was dismissed on 5th November, 1954 with a direction that the petitioner should furnish the particulars of (1) the Polling Stations to which voters were conveyed in motor vehicles, (2) the registration numbers of the vehicles with respect to each station and (3) the names of the voters carried to the Polling Station, if known to the petitioner. The 1st Respondent then applied for an amendment of his written statement which was allowed on terms as to costs. The following additional issues were subsequently framed by the Tribunal:—

- (9) Whether the petition is defective for want of necessary particulars in respect of all or any of the charges and whether the petition should therefore be dismissed in whole or in part?
- (10) Whether the plea raised by the above issue is barred by *res judicata* in view of the order in I.A. No. 4 of 1954?
- (11) Whether the petition is bad for the reason that the verification is not in accordance with law?

5. Though the petitioner relied on as many as 110 instances of false personation in his petition, he ultimately restricted himself to 20 instances and besides, even at the outset, he did not press the allegations as to bribery and treating. Similarly, the 1st Respondent restricted himself to 3 out of 43 instances of false personation relied on by him and abandoned the case of bribery. The case thus considerably narrowed itself down during the trial, but what remained was the subject-matter of an exceptionally keen contest between the parties.

6. The first and principal question that has to be decided in this case relates to false personation. To understand and appreciate the various contentions advanced on behalf of the 1st Respondent on this aspect of the case, it is necessary to refer in some detail to the allegations contained in the petition. According to the petitioner, there was false personation (a) of deceased voters, (b) of persons who by reason of incarceration or other reasons could not have voted

and (c) of persons who had to give tendered votes because someone had already voted in their names. List A to the petition gives the particulars of the deceased voters; List B of persons who are alive; but could not have voted; and List C of persons who gave tendered votes. List A contains 79 instances; List B, 2 instances and List C, 18 instances. The petitioner has in his petition reserved his right to add to the instances, and he submitted to the Election Commission a further list containing 11 instances which he prayed may be included in List A already filed by him. Though both the parties alleged that the instances of false personation relied on by them were all at the instigation or with the connivance of the opposite party or his agents, that part of the case has been totally abandoned by both the parties, and no attempt was made by either of them to establish the alleged instigation or connivance. The petitioner's present case is one of false personation by third persons, and he would contend that if there had been false personation of voters or even if votes had been cast by wrong persons, though not under circumstances amounting to false personation, the votes so cast are invalid and should be struck off. Sri S. Ramachandra Iyer, the learned Advocate for the 1st Respondent would contend that the petition contains a charge of a major corrupt practice only, *viz.*, false personation at the instance of the 1st Respondent or his agents and that it is not open to the petitioner, in the absence of necessary allegations, to rely on a case of minor corrupt practice, *viz.*, false personation unconnected with the 1st Respondent or his agents or on a case of votes having been cast by wrong persons and to claim relief on that basis.

7. It therefore becomes necessary to examine in some detail the various allegations contained in the petition and to consider further whether even if the petitioner had not alternatively pleaded the case now relied on by him, he would be entitled to relief on that basis. Paragraphs 4 and 5 of the petition refer to the three categories of false personation mentioned above and state that particulars of such false personations are to be found in Lists A, B and C appended to it. Paragraph 6 begins by saying that "according to the said particulars, there are as many as 81 items where such false personations have taken place" and then proceeds to state that "such false personations were instigated to be committed by the 1st Respondent or his agents or at their instigation or with their connivance". It would thus be seen that there are two independent allegations, each complete in itself, the first of which, had it stood alone, would amount to the minor corrupt practice of false personation within the meaning of Section 124 of the Act. The further allegation that the said false personations were at the instigation or with the connivance of the 1st Respondent or his agents would convert the corrupt practice previously alleged into a major one. Nothing can be clearer than this, and the fact that the petitioner wished to embellish his case by alleging instigation or connivance by the 1st respondent cannot destroy the effect of the earlier allegations of facts amounting to a minor corrupt practice. In paragraph 12 again, it is stated that "whether the 1st respondent was directly responsible or not for the above corrupt practices, it is clear that the election has been considerably affected by the commission of such corrupt practices". The use of the word 'directly' is not happy. If they are strictly construed, the words "whether the 1st respondent was directly responsible or not" would mean 'whether he was directly or indirectly responsible' and in either case, the allegation would be one of a major corrupt practice only. But the further plea that the election had been considerably affected by the commission of the corrupt practice would suggest beyond a shadow of doubt that the petitioner wished to rely upon a minor corrupt practice as well, for while even a single instance of a major corrupt practice by the 1st respondent would avoid the election, it would be necessary to allege and prove that the result of the election has been materially affected only in the case of a minor corrupt practice. We have therefore no hesitation in holding that the petition as framed relies on a case of minor corrupt practice as well.

8. On the question whether the petition contains sufficient allegations that, apart from false personation, votes have been wrongly cast in the names of deceased voters and others and should therefore be excluded, it seems to us that there is sufficient basis laid in the petition, though it may be somewhat obscurely worded. In paragraph 12, there is a plea that a number of votes have to be invalidated on account of the various corrupt and illegal practices mentioned in the earlier paragraphs, and that the petitioner is entitled to be declared as duly elected as he has secured a majority of valid votes polled at the election. We may point out that no illegal practice as defined in Section 125 of the Act is relied on anywhere in the petition, and the claim that there is a majority of valid votes in his favour indicates that a proper count should be made by excluding, besides others, the votes wrongly cast at the election.

9. We shall now proceed to consider whether, even if the petition contains no allegations of a minor corrupt practice or of votes having been wrongly cast, the petitioner would be entitled to relief on those grounds. It is undoubtedly the law that a party cannot succeed on a case not put forward by him, and at variance with that relied on by him, but such is not the case here. The mere fact that the party has put his case on a higher footing than what the facts ultimately disclose or he is able to establish, would not disentitle him to relief in respect of that part of the case which he has been able to prove. So far as the present case is concerned, the facts entitling the petitioner to relief on grounds referred to above do but form part of the allegations which go to make up the charge of the major corrupt practice of false personation. If a vote had been cast by a person wrongly in the name of another, though mistakenly, the vote is invalid. If there is corrupt motive behind the act, it becomes false personation. If a candidate or his agent is in any way connected with it, it becomes a major corrupt practice. Thus the charge of major corrupt practice involves as a necessary ingredient the elements of the other charges, and it cannot be said, having regard to the facts and circumstances of the present case, that the 1st respondent was either taken by surprise or was not called upon to meet the facts necessary to constitute the lesser charges. That the petitioner has not been able to establish or that he abandoned, a part of his case, cannot deprive him of relief in respect of the remaining part.

10. We shall now examine the authorities bearing on this matter. It has been decided in the *Athlone Case* (1880) 3 O' Malley and Hardcastle, 57 at page 59 that if a person innocently votes in the name of another and the only charge in the petition is one of personation, the vote cannot be struck off since the innocent voting in another's name is a matter which is not covered by a charge of personation. But a different view appears to have been taken in other cases. In the *Stepney case* 4 O' Malley and Hardcastle 34, the voter had voted twice, first for the Stepney division, and then for the St. George's Division. The charge against him was one of false personation. The Court after holding that the voter had no corrupt intention and that the second vote was given innocently observed that the first vote holds good and the second bad. See page 44. It has again been held that if a person whose name is on the register has not voted or could not have voted and it is also shown that a vote has been given in his name and nothing more is shown, the vote must be struck off on a scrutiny. See the observations of His Lordship Justice Cave in *Finsbury Central Division case*, 4 O' Malley and Hardcastle, page 171 at page 175. The position that where a major corrupt practice alone is pleaded and only a minor corrupt practice is established, relief can be granted on the latter basis derives considerable support from the following cases. *Basti District West Muhammadan Rural Constituency*; *Bellary Muhammadan Rural Constituency*; and the *Netala Muhammadan Constituency* reported at pages 112, 136 and 897 respectively of *Sen and Poddar Indian Election Cases*. From the facts set out in the above decisions, it appears that false personation with the connivance of the candidate or his agent had been pleaded, but in respect of several instances, only false personation unconnected with the candidate or his agent was held proved. Even so, the Election Commissioners directed the votes to be struck off. We would therefore hold that even if the petition be read as containing a charge of major corrupt practice only, the petitioner would be entitled to relief on the basis of false personation by third persons or wrong votes having been given in the name of others.

11. It was next urged that even if the petition is sufficiently wide to embrace the lesser charges, the petitioner cannot get relief in respect of the instances now relied upon by him. The argument is put thus: Lists A, B and C together contain 99 instances (79 plus 2 plus 18) of false personation, but in paragraph 6 of the petition, it is stated that there are as many as 81 items where such false personations have taken place. It is not known whether the instances now relied upon form part of those '81' items or are included in the 18 left out, and there is nothing to indicate that any or all of the instances now relied on by the petitioner form part of those '81' items. We must confess our inability to accede to this argument, and in our opinion this is merely an attempt to take advantage of an arithmetical or clerical error which has crept into the petition. Paragraph 6 says that "according to the said particulars, there are as many as 81 items where such false personations have taken place". The particulars referred to are those found in Lists A, B and C, as will appear from a reading of paragraphs 4 and 5. The aggregate of the instances mentioned in the three lists is 99 and not 81, and the reference to the figure '81' is obviously a mistake, probably occasioned by the fact that Lists A and B alone were totalled up and List C was inadvertently left out. The earlier paragraphs make it quite clear that according to the petitioner, there was false personation in respect of all the instances mentioned in the three lists, and his case is not that there was false personation with respect to some of them only. It is needless to labour the point further.

12. A somewhat contradictory argument was next urged that the petitioner is not entitled to relief in respect of List C (list of Tendered votes) as the 81 instances of false personation mentioned in paragraph 6 could relate to Lists A and B only (which together make up 81) and that the earlier allegations of false personation with regard to List C must be deemed to have been given up. We have already held that the figure '81' is an error, and the petitioner's case is that in respect of the instances found in all the lists including List C, there has been false personation. We see no merit in this contention either.

13. A further refinement in relation to this argument is that the petitioner cannot get relief in respect of what has been styled as List A, supplemental, as there are no allegations with respect thereto. As already stated, the petitioner sent a further list of 11 instances of false personation, which he prayed might be included in List A and that list, has, along with the petition, been forwarded to this Tribunal. If the instances found in the further list are included in List A as prayed for, it cannot possibly be said that there are no allegations in the petition with regard to the further list. The present argument was advanced because the list has been described as List A, supplemental, in the copy of the petition, and there is no reference to it in the body of the petition. If the petitioner's list is accepted and his prayer acceded to, the further instances would, in the eye of law, form part of List A and the mere description of them as List A supplemental would not deprive the petitioner of any relief which he would otherwise, be entitled to.

14. We may at this stage notice yet another contention advanced on behalf of the 1st respondent with regard to the further list of instances filed by the petitioner, *viz.* that it is time barred. This point was not taken up in the written statement and was not advanced till towards the concluding stages of the arguments. As the point is one of limitation, we allowed it to be taken though even during the concluding stages. The notice of the return of the election expenses of the 1st respondent which had been lodged with the Returning Officer was published in the Fort St. George Gazette on 23rd December, 1953. The election petition had to be presented within 14 days from the said date, and it was so done. The further list sent by the petitioner reached the Election Commission on 7th January, 1954, as will appear from the endorsement on the top thereof. It is contended that though it might be open to the petitioner to file such additional lists within the 14 days allowed by law for the presentation of an election petition, no further list could be received after the expiration of the said period. It is not disputed on behalf of the petitioner that the list is out of time, but what is urged by Sri Meenakshisundara Shastriar, the learned Counsel for the petitioner is that the Election Commission must be deemed to have condoned the delay and it is not open to this Tribunal to decline to go into matters that have been sent to it for trial. There would be much force in this contention, if the Commission had applied its mind to the matter and exercised its discretion in favour of the petitioner. There is, however, nothing on record to indicate that the Commission did so. The mere transmission of the further list along with the main petition cannot by any stretch of reasoning be deemed to amount to a condonation of the delay or preclude this Tribunal from going into the question whether the list is in time or not. We are of opinion that the list has to be rejected as out of time.

15. It was next strenuously contended that to entitle a person to relief on the basis of the minor corrupt practice of false personation, it is necessary to allege and prove who the actual offender is. This argument is sought to be rested on the language of Section 83(2) of the Act and on general principles. Section 83(2) does no doubt require particulars of the corrupt or illegal practice including as full a statement as possible as to the names of the parties alleged to have committed the corrupt or illegal practice. But the obligation is not absolute; it is qualified by the words 'as possible'. In the nature of things, it will not be possible to name the offender unless he is caught in the act of personation. It is therefore too much to require that the name of the offender should invariably be mentioned, as that would be tantamount to throwing an impossible burden on the party complaining of false personation. On general principles again, we are unable to perceive any valid reason for holding that the non-mention of the name of the offender would entail the dismissal of the charge. It is no doubt true, as urged by the learned Counsel for the 1st respondent, that to constitute the offence of personation, the offender must be actuated by a corrupt motive. In the Stepney case 4 O' Malley and Hardcastle 34 at page 46, His Lordship Denman J. states the position thus:—"It is thoroughly understood election law that, unless there be corruption, and a bad mind and intention in personating, it is not an offence. I think there is still to be added to the offence of personation a corrupt intention and, where the corrupt intention is absent, the offence of personation cannot have been committed". To the same effect is the judgment in Venkayya in re, I.L.R. 53 Madras, 444. But it is difficult to follow the further reasoning of the 1st

respondent's Counsel that without knowing the offender, it is impossible to establish *mens rea* and the absence of the particular is likely to cause prejudice to his client. Though one may not know the offender, the intention would easily be inferred from the nature of the act and the attendant circumstances and when, as here, it is said that votes have been cast in the names of deceased voters, one can easily gauge the intention of the offender when there is no room for honest belief or *bona fide* mistake. We are unable to see how the absence of the name of the offender could possibly prejudice the 1st respondent. In the Hoshiarpur West Mohammadan Constituency case, Sen and Poddar, Indian Election Cases, 955, we find that the particulars as to personation do not give the names of the persons who personated because they were not known to the petitioner and it was beyond his power to do so, and the only further particulars ordered by the Commissioners relate to the dates on and the Polling Station at which the personation was committed. This case therefore lends considerable support to the view we have taken.

16. One other legal contention advanced on behalf of the 1st respondent to be noticed is that the only relief asked for by the petition is one under Section 84(b) that the election of the 1st respondent is void and that he himself has been duly elected and that if he fails to obtain that relief, he is not entitled to relief under Sub-section (a) that the election of the 1st respondent is void in the absence of a prayer for such an alternative relief. We are unable to accede to this argument either. Relief under Sub-section (b) is a composite one and the language of Section 101 clearly indicates that it is after declaring the election of the returned candidate to be void that a further declaration has to be made that the petitioner has been duly elected provided that the conditions of that section are satisfied. Even if the petitioner fails with regard to the second half of the relief, we fail to find any legal obstacle to the grant of the earlier part of it provided that he has made out a case for it. This practically concludes the legal contentions advanced on behalf of the 1st respondent.

17. We shall now proceed to discuss the evidence relating to various instances of personation relied on by either side. As already stated, the petitioner has now restricted his case to 20 instances made up as follows:— 11 in List A; 2 in List A supplemental; 1 in List B and 6 in List C. It may at this stage be observed that the 1st Respondent, apart from a general denial of the allegations as to false personation of voters has not in his written statement put forward any specific case with regard to the individual instances. He has not specifically stated whether the voters alleged by the petitioner to have been dead at the time of the election were in fact alive on that date, or not, or again whether the voters who had to tender their votes because someone had already voted in their stead are the real voters answering to the description found in the electoral roll. To a notice calling upon the 1st Respondent to admit the death of certain voters and the incarceration of another, the 1st Respondent would not make any admission, but he put the petitioner to strict proof of his allegations.

*Instance No. (1): Palaniappa Odayar, son of Sinnappa Odayar, Voter No. 326, in Ex. A-1 (Marked copy of the Electoral Roll), Polling Station No. 214, Booth No. 1.—P.W. 9, Valliammal says that she is the wife of the voter, that her husband died of fever, about 1½ years ago in the month of Panguni and that there is no other Palaniappa Odayar in their street. P.W. 11, the Karnam of Kangayam identifies her and proves Ex. A-59, the extract from the death register of Kangayam village. Ex. A-59, gives the date of death as 22nd March 1953. The 1st Respondent's Counsel at the time of arguments did not dispute the death of the voter, but he contended that as no *mens rea* has been established, the vote must stand. We are unable to agree. The evidence of P.W. 9 makes it clear that there is no other person in their street having the same name as her husband, and if some one had gone and applied for a voting paper in the name of the said Palaniappa Odayar, son of Sinnappa Odayar, there can be no doubt that it must have been out of a corrupt motive. The case is clearly one of false personation. After the conclusion of the arguments, the boxes and packets containing ballot papers relating to the disputed votes were opened and marked by consent of parties (the ballot papers being traced from the numbers found in the identification cards in respect of the disputed voters). Ex. A-93 is the ballot paper, and it was found in the petitioner's box. This vote will be struck off. This is one of the many instances where even though the petitioner's contentions are accepted and those of the 1st Respondent rejected, the benefit goes to the latter. That is the mystery of the ballot box.*

Instance No. (2): Karuppanna Goundar, son of Sellappa Goundar, Voter No. 2080 in Ex. A-3 (marked copy of the Electoral Roll), Polling Station No. 232, Booth No. 2.—P.W. 17, Sellammal, the wife of the voter gives evidence that her

husband died 3 years previously at Ayyampalayam of small-pox and that the death was not reported to the Village Munsif. P.W. 18, the Village Munsif of Kilankundal identifies P.W. 17 and would state further that she told him of her husband's death 3 years previously. As against this, there is the evidence of R.W. 15, the Village Munsif of Kilankundal, Southern bit within which limits the village of P.W. 17 is situate that the voter was alive on the date of election. The case of the 1st Respondent is sought to be buttressed further by the evidence of R.W. 29, a namesake of the voter that he went and voted at the election. He belongs to a different place, and he would say that he was not asked particulars as to his place of residence at the Polling Station. He has not informed anyone till the date of his examination to his having voted at the election. He admits that he was taken to Court by the Kangayam Village Munsif's man, and it is well established on the evidence that the Kangayam Village Munsif, the brother of the son-in-law of the 1st Respondent is taking a keen interest on behalf of the 1st Respondent. We are therefore unable to accept the contention on behalf of the 1st Respondent that even if voter No. 2080 had not voted, the mark might have been put against that voter because of the vote cast by R.W. 29. But in the absence of any reliable record evidencing the date of the death of the voter and in view of the conflicting oral evidence on the point, we are unable to hold that the voter was dead on the date of the election as the standard of proof required in such cases approximates to that needed to prove a criminal charge, the election enquiry being held to be quasicriminal in its nature. This vote, Ex. A-94 (which is in favour of the petitioner) will stand.

Instance No. (3): Chellappa Goundar, son of Karuppanna Goundar, Voter No. 949 in Ex. A-9 (the marked copy of the Electoral Roll), Polling Station No. 226, Booth No. 1.—P.W. 42 Karuppanna Goundar gives evidence that his mother and the mother of Sellappa are daughters of brothers, that Sellappa died 3 or 4 years ago, long before the date of the bye-election and that he went along with Muthusami, son of the deceased to report the death to the Village Munsif. He says further that Muthusami is not now to be found in the village, P.W. 41, the Village Munsif of Moolanur proves Ex A-78, which is a certified copy of the extract from the death register recorded by him relating to the death of Sellappa Goundar, son of Karuppanna Goundar. The age found in Ex. A-9 is 50 while Ex A-78 gives the age of Sellappa as 64. This is nothing unusual as ignorant villagers are often not definite about the age and give varying estimates at various times. The non-examination of Mathusami again does not matter as the petitioner did his utmost to secure his attendance, but could not get him. P.W. 41's evidence that at the time of revision he would delete the names of the deceased from the electoral roll would not necessarily lead to the conclusion that the voter must have been alive on the date of the bye-election. The name of the deceased and those of his father and son found in Ex. A-78 clearly establish that it refers to the voter. The date of death is mentioned as 17th September 1951, and we accordingly find that the voter was dead on the date of the election. There is no suggestion that there is any other voter corresponding to the description of the deceased, and we have no hesitation that this is also a case of false personation. The vote, Ex. A-95 (which is in favour of the 1st Respondent) is lost to him.

Instance No. (4): Karuppayee Ammal, wife of Nachimuthu Goundar, Voter No. 2775 in Ex. A-10 (the marked copy of the Electoral Roll), Polling Station No. 227, Booth No. 2.—P.W. 22, Sinnappa Goundar says that he is the son of the voter; that his mother died 3 years ago and that his father reported her death to the Village Munsif. P.W. 23, the Village Munsif of Vellavavipudur supports him and proves further Ex. A-64, the certified copy of the extract from the death register, the original of which has been recorded by him. There is some discrepancy with regard to the age found in Ex. A-10 and Ex. A-64. In the one it is mentioned as 47 and in the other as 55. This is not of much consequence. P.W. 22 states that his mother died of dysentery while the cause of death is mentioned in Ex. A-64 as "matra jurangal". Such mistakes occasionally occur. Though we may not rely on the evidence of P.W. 23 on some of the matters that he speaks to, it does not follow that his testimony should be rejected in toto, especially with regard to events which have been recorded by him in his official capacity. There can be no doubt that the person whose death is recorded in Ex. A-64 in one other than the voter himself. The date of death found in Ex. A-64 is 3th October 1951. There is nothing on record to suggest that any other voter either bona fide or mistakenly cast his vote in the name of the

deceased. We hold that this voter had been personated, and Ex. A-96, the vote cast in favour of the 1st Respondent should be struck off.

*Instance No. (5): Nachimuthu Goundar, son of Vanjappa Goundar Voter No. 4750 in Ex. A-11, (the marked copy of the Electoral Roll), Polling Station No. 227, Booth No. 3.—P.W. 25, Kaliappa Goundar says that he is the son-in-law of the voter, that his father-in-law died of fever 2 years ago, that he went and reported the matter to the Village Munsif and that Ex. A-67 is a true copy of the extract from the death register signed by him. P.W. 41, the Village Munsif of Moolanur was not put any question with regard to Ex. A-67 but that cannot militate against the truth of the evidence given by P.W. 25, corroborated as he is by the entries found in Ex. A-67. He is a close relation of the deceased, and we accept his evidence. Here again, we hold, in the absence of any circumstance to suggest any *bona fide* mistake, that the deceased voter has been impersonated. Ex. A-97 is the vote cast in the name of the deceased voter and is in favour of the petitioner. It is lost to the petitioner.*

*Instance No. (6): Thirumakkal, wife of Kolandaya Goundar, Voter No. 218 in Ex. A-12, (the marked copy of the Electoral Roll), Polling Station No. 231, Booth No. 4.—P.W. 26, Perumal Goundar, the father of the voter speaks to her death, 2 years previously. He and his son-in-law went to report the death to the Village Munsif, and P.W. 24 the Village Munsif who was recalled proves Ex. A-81, the extract from the death register. The date of death found in Ex. A-81 is 22nd November 1952. The death of the voter is not now disputed on behalf of the 1st Respondent, and R.W. 18, Thirumakkal, the mother-in-law of the voter also speaks to that. The case now sought to be put forward on behalf of the 1st Respondent is that R.W. 18 who is also a voter and bears the name of Thirumakkal went and voted at the election, and the mark had been wrongly put against the name of the deceased voter in the Electoral Roll by the Polling clerk. She would say that her husband Parianna Goundar has an *alias* Kolandayappa which is a variation of the name of the husband of the deceased voter. R.W. 19, Nachimuthu Goundar and R.W. 20, the Karnam of Ponnivadi also would say that her husband was known as Kolandia Goundar also. But R.W. 18 admits that the *alias* of her husband would not be found in the documents, and in the sale deed in favour of her husband the name is given as Perianna only. R.W. 20 also speaks to the fact that the records refer to him only as Perianna Goundar. One can easily see that this *alias* has been merely invented for the occasion to support the theory that R.W. 18's husband's name corresponds to some extent with that of the husband of the deceased voters and that therefore there has been a mistake on the part of the election Officials in putting the mark. We have no hesitation in rejecting the evidence of R.Ws. 18, 19 and 20, and we find that someone must have falsely impersonated the deceased voter. The vote, Exhibit A-98 which is in favour of the first respondent will be excluded in the final count.*

Instance No. (7): Chenniappa Goundar, son of Karuppanna Goundar, Voter No. 806 in Exhibit A-13 (the marked copy of the Electoral Roll) Polling Station No. 231, Booth No. 1.—P.W. 19, Palani Ammal, the wife of the voter says that her husband died of cholera 4 years ago and the death was reported to the Village Munsif by her husband's elder brother, Sellappa Goundar. P.W. 24, the Village Munsif of Ponnivadi identifies P.W. 19 and proves Exhibit A-65, the extract from the death register. We have already observed that we are not prepared to reject the testimony of P.W. 24 when it is supported by records simply because we are unable to accept his evidence in some particulars. That P.W. 19's name is not found in the electoral roll is not a circumstance for disbelieving her testimony as to her relationship to the deceased. We believe the evidence of P.Ws. 19 and 20 on the point. From Exhibit A-65, it is seen that Chenniappa died on 30th October 1950. Both P.Ws. 19 and 24 say that there is no other Chenniappa, son of Karuppanna in the village, and this again is a clear case of false personation. The vote, Exhibit A-99 is in favour of the first respondent and it will be struck off.

Instance No. (8): Thiruman, son of Arunachalam, Voter No. 853 in Exhibit A-13, (the marked copy of the Electoral Roll) Polling Station No. 231, Booth No. 1.—Arunachalam above referred to had two sons, both of them known as Thiruman. One of these was dead at the time of the bye-election and the other died only a few months ago at Karuppampattai near Dindigul. So far, it is common ground for both the parties. The vote has been cast in the name of the younger Thiruman, and the contest centres around the question relating to the Thiruman who died first. According to the petitioner, the younger Thiruman was the first to die and was not alive on the date of the election. The case of the first Respondent is that the elder Thiruman predeceased his younger brother

and the latter was alive on the crucial date. P.W. 20, Marudamuthu and P.W. 24, the Village Munsif of Ponnivadi speak in support of the petitioner's case. P.W. 24 besides proves Exhibit A-82, the extract from the death register. According to him, the elder Tiruman came and reported the death. Exhibit B-9 is the death register of 1949 for Ponnivadi Village and serial number 86 is the entry relating to the death of Tiruman. In column 31 relating to the particulars of the informant, the word found is 'tambi'. The witness would explain it by saying that he would enter the relationship of the deceased to the informant in that column. Later on, he modifies it somewhat and says that he would ask the informant 'Seettupona al Unakku enna Sondam'. "(How is the deceased related to you) and whatever answer is given he will note it down in the death register. To show that this explanation cannot hold good reference is made to the entries bearing serial numbers 67, 69 and 57. All these relate to the death of children and in all these cases P.W. 24 has given only the relationship of the informant to the deceased. R.W. 16, Marudamuthu the brother-in-law of the voter, R.W. 17, Kallmuthu an agnate and R.W. 20, the Karnam of Ponnivadi all swear that Periya Tiruman died first, about 5 years ago at Hanumanthankottai and Chinna Tiruman died just a few months ago at Karuppampatti. According to P.W. 20, R.W. 16 is said to have informed him about the death of Periya Tiruman at Karuppampatti. This is denied by R.W. 16. This witness says in cross-examination that his wife is aged about 25, that Chinna Tiruman was aged 20 at the time of his death and that the Tiruman who died last was older than his wife. From this it is sought to be argued that it is the older Tiruman who must have died last. The ages given are only approximate and it would not be safe to rest any conclusion on the ages mentioned by the witness contrary to his positive assertion that the younger Tiruman died last. Apart from the fact the oral evidence on the side of the first Respondent is that of very near kinsmen of the family, there is the solid fact that in Exhibit B-9, the informant is mentioned as 'the younger brother'. In Exhibit A-82, the age of the deceased is given as 26. The date of death mentioned there is 22nd July 1949. In Exhibit A-13 which is a document prepared much later, the age of the voter is given as 22. This also affords some indication that the man who died first must have been the senior Tiruman. For all these reasons, we hold that it has not been satisfactorily proved that the younger Tiruman was not alive on the date of the election, and the vote, Exhibit A-100 which is in favour of the first Respondent will accordingly stand.

Instance No. (9): Sankara Madari, son of Ammasai Madari, Voter No. 2808 in Exhibit A-14 (the marked copy of the Electoral Roll) Polling Station No. 231, Booth No. 3.—P.W. 21, Palanai deposes that she is the wife of the voter, that her husband died 3 years ago and that there is no other Sankara Madari, son of Ammasai Madari in her village. P.W. 24, the former Village Munsif identifies P.W. 21, says that Sankara Madari died 3 years ago and proves Exhibit A-66, the extract from the death register. Comment is made that Nachi Madari the informant has not been called and that P.W. 24 is not a witness of truth. We have already said that we are not prepared to reject the evidence of P.W. 24 when it derives support from official records for the reason that a part of his oral evidence is not accepted. The non-examination of the informant is a matter of no consequence whatsoever when the wife of the voter and the Village Munsif to whom the report of death was made have been examined. In the face of the evidence of P.W. 21 that there is no other Sankara Madari, son of Ammasai Madari, it is obvious that the present case is also one of false personation. The vote, Exhibit A-101 which is in favour of the first Respondent should be excluded.

Instance No. (10): Palanisami Goundar, son of Karuppana Goundar, Voter No. 917 in Exhibit A-16 (Marked copy of the Electoral Roll) Polling Station No. 223, Booth No. 3.—P.W. 15, Periasami Goundar the younger brother of the voter speaks to his death 20 months ago and to the fact of their father reporting the matter to the Village Munsif. N.W. 16, the Village Munsif of Thurambadi identifies P.W. 15 and proves Exhibit A-62, the extract from the death register. The date of death found there is 28th March 1953. The death of the voter before the election was conceded during arguments by the learned Advocate for the first Respondent. But his case is that P.W. 36, Palanisami Goundar (son of Karuppana Goundar) had really voted and the vote is therefore valid. P.W. 36 denies having voted at the election. R.W. 14, Periasami Goundar, a step-brother of P.W. 36 has been examined to say that he and P.W. 36 went with their junior paternal uncles, Chennimalai and Ramasami and voted. The uncles have not been examined. From the answers given by R.W. 14 in cross-examination, it is seen that the uncles are voter Nos. 1113 and 1116 in Exhibit A-16, and it would be found from it that they have not voted. This clearly shows that the evidence of R.W. 14 cannot be true. Apart from that, in the face of the positive

assertion of P.W. 36 that he did not vote, we are not prepared to accept the evidence of R.W. 14 that he (P.W. 36) did. There is nothing to suggest that any other person could have *bona fide* voted in the name of the deceased voter. This is equally a case of false personation and the vote, Exhibit A-102 given in favour of the first Respondent should be struck off.

*Instance No. (11): Raman Chuckli, son of Veeran Chuckli, Voter No. 928 in Exhibit A-20 (the marked copy of the Electoral Roll), Polling Station No. 206, Booth No. 1.—P.W. 55, the acting Village Munsif proves Exhibit A-80, the certified copy of the extract from the death register. Veeran and Kumaran, the father and brother of the deceased voter were sought to be examined by the petitioner, but that proved infructuous as their attendance could not be secured though even warrants of arrest were taken out against them. That the voter was not alive on the date of election is not now disputed by the first Respondent's Counsel. He wishes to contend that R.W. 23 having the same name and the father's name as the voter *bona fide* voted in his name. R.W. 23, Raman Chuckli, R.W. 24, Amasi Chuckli and R.W. 25, Ramasami Goundar have been examined to prove this. R.Ws. 23 and 24 say that all the three went together to the Polling Station and voted in the order in which they have been examined in Court. R.W. 25, though he gives similar evidence in chief-examination, contradicts them later and states that he met R.Ws. 23 and 24 outside the Polling Station after they had voted, that it was subsequently that he went in and gave his vote and that they could not have seen the receipt of the ballot paper by him. R.W. 23 would not admit that there was another Raman Chuckli, son of Veeran Chuckli in the village and that he is working in the farm of the son of R.W. 25, but this is spoken to by R.W. 26. R.W. 23 was examined on 9th March 1955 before lunch, and he blurted out that he was asked his wife's name also at the Polling Station. R.W. 24 was examined after lunch, and even at the outset of his examination-in-chief in answer to a question put by the Counsel as to his wife's name, the man exclaimed 'Ange en pendatti per Ketkavillal'. We are unable in view of the contradiction and other infirmities to believe the evidence of R.Ws. 23, 24 and 25. If that evidence is left out of account, the inference is irresistible that the person, whoever he was, who voted in the name of the deceased voter must have acted with a corrupt motive, and this is yet another instance of false personation. The vote, Exhibit A-103 which is in favour of the first Respondent is lost to him.*

Instance Nos. 12 and 13 are to be found in List A supplemental to the petition. We have already held that the said list has to be rejected as out of time, but still with a view to secure completeness, we prefer to give our findings with regard to those instances also.

Instance No. (12): Subban, son of Kumaran, Voter No. 1674 in Exhibit A-22 (the marked copy of the Electoral Roll) Polling Station No. 207, Booth No. 3.—P.W. 12, Tiruman, the son of the voter gives evidence that his father died 2½ years ago, that he went and informed the Village Munsif about it and proves Exhibit A-60, the extract from the death register. P.W. 27, the Karnam proves Exhibit A-60(a) yet another copy of the extract. The age of the voter is given as 52 in Exhibit A-22 and that of the deceased as 80 in Exhibit A-60 and 60(a). In view of this wide discrepancy, it is sought to be contended on behalf of first Respondent that the entries do not relate to the voter in question. But in view of the positive evidence given by the son of the voter, we are not prepared to attach much value to this discrepancy. We believe the evidence of P.W. 12 and hold that the voter was not alive on 8th November, 1953 (the date of death mentioned in Exhibits A-60 and A-60(a) being 7th January, 1952). P.W. 28, a namesake of the voter says that he did not vote. Here again, it can only be a case of false personation, and the vote, Exhibit A-104 which is in favour of the petitioner should be excluded from his count.

Instance No. (13): Nachimuthu Goundar, son of Nachimuthu Goundar, Voter No. 1263 in Exhibit A-24 (the marked copy of the Electoral Roll), Polling Station No. 211, Booth No. 2.—The evidence with regard to the death of the voter is that of P.W. 8, Muthammal, wife of the voter. She says that her husband died 2 years ago in the month of Adi and Varadammal her husband's brother's wife reported the death to the Village Munsif. P.W. 10, the Village Munsif of Sivanmalai identifies P.W. 8 and proves Exhibit A-58, the certified copy of the extract from the death register. He states that Varadammal informed him about the death. The non-examination of Varadammal is of no importance. The cause of death is mentioned by P.W. 8 as cholera, but Exhibit A-58 mentions it otherwise. The death is noted in the column 'Muttra ella Karanagal'. Though there is this variance, there is nothing to lead us to doubt the testimony of P.W. 8, the wife of the voter about the death of her husband and its date (14th August, 1952)

as found in Exhibit A-58. There are absolutely no circumstances to indicate that anybody could have *bona fide* voted in the name of the deceased voter, and we accordingly hold that this voter also has been falsely impersonated, and the vote, Exhibit A-105 which is in favour of the first Respondent will have to be left out in the count. We may state that even if it be held that List A supplemental cannot be rejected, the result will be the same, as each party will lose one vote.

*Instance No. (14): List B, Veerappa Goundar, son of Semalai Goundar, Voter No. 1651 in Exhibit A-24 (the marked copy of the Electoral Roll), Polling Station No. 211, Booth No. 2.—P.W. 2, Veerappa is the voter in question. He was in Jail on the date of election. This is spoken to by him as well as by R.W. 35, Angappa Goundar and is further proved by Exhibit A-52, the extract from the Convict Register of the Coimbatore Central Jail. This is not now in dispute, but the first Respondent's present case is that P.W. 35, a namesake has voted in the name of P.W. 2. P.W. 35 denies this. R.W. 31 Nachiappa Goundar would say that he saw P.W. 35 near the Polling Station on the date of election. R.W. 35, Angappa goes a step further and states that he, P.W. 35 and one Arappa Goundar went together and voted. Arappa Goundar has not been examined. R.W. 31 has admittedly worked in the lands of the first Respondent. R.W. 35 admits that he did not tell anyone till the time of his examination in Court that P.W. 35 went with him and another and voted. In the circumstances, we prefer to accept the evidence of P.W. 35 and hold that he did not vote. There is nothing to suggest in the circumstances of the case that anybody could have *bona fide* voted in the name of this voter. We accordingly find that this voter also has been falsely impersonated, and the vote, Exhibit A-106 which is in favour of the first Respondent will be struck off.*

18. The next six instances relate to tendered votes.

*Instance No. (15): Angappa Chettiar, son of Selamban Chettiar, Voter No. 47 in Exhibit A-2 (the marked copy of the Electoral Roll), Polling Station No. 214, Booth No. 2.—P.W. 3, Angappa Chettiar says that when he went to the Polling Station, he was told that someone had already voted in his name and that he therefore gave a tendered vote. Exhibit A-54 is the tendered votes list signed by him. P.W. 11, the Karnam identifies him and speaks to the circumstances in which he gave a tendered vote. R.W. 34, the Village Munsif also says that he identified P.W. 3 at the Polling Station and proves Exhibit A-54(a) the signature of P.W. 3 in the tendered votes list. It is not now disputed by the first Respondent's Counsel that P.W. 3 is the real voter and that he gave a tendered vote. What he urges however, is that personation has not been made out and the petitioner is therefore not entitled to any relief. P.W. 3 says that there is no other person of his name in his street, and he has not been contradicted on the point. We have therefore not the slightest doubt that whoever voted in his name must have done so with a corrupt intention and that therefore the case of false personation relied on by the petitioner has been established. We may add that even if the case of false personation is negatived, the tendered votes will have to be included in the count if it be established that the tenderer is the real voter. The real voter cannot be deprived of his vote because someone had *bona fide* voted in his name or because the Polling Officer had wrongly put the mark against his name. In either case, he cannot be made to suffer for the consequences of the acts of others and his vote must be held to be valid. The Cirencester Division case, 4 O' Malley and Hardcastle, 194, is an authority in point. It was proved in that case that by the mistake of the polling clerk a man named Bruton, whose number on the register was 504, had received the ballot paper answering to 540, and had voted with it. Cleaver, whose number was 540, had therefore tendered a vote. The Court allowed both the votes to be received, saying that both men were clearly entitled to vote, and ought not to be disentitled from doing so by the mistake of the clerk. Reference may also be made to the St. Andrews case, 4 O' Malley and Hardcastle, page 32. It was there proved that a vote had been wrongly given by some one unknown, in the name of a voter named Watson for the Respondent. Watson afterwards voted on a tendered ballot-paper for the Petitioner, whereupon the Court added a vote to the Petitioner's number and took one away from the Respondent's. We accordingly hold that the original vote, Exhibit A-107 given in favour of the petitioner shall be taken away from the petitioner's votes. Exhibit A-113, the tendered vote given by the voter is for the petitioner and it shall be added in his favour.*

Instance No. (16): Seerangan Chettiar, son of Seerangan Chettiar, Voter No. 315 in Exhibit A-2 (marked copy of the Electoral Roll), Polling Station No. 214, Booth No. 2.—This voter is said to be one of the persons who had to

give a tendered vote as someone had already voted in his name previously. P.W. 11, the Karnam of Kangayam states that he knows the voter Seerangan Chettiar, son of Seerangan Chettiar of Perumalkoil Street, Block No. 11 of Kangayam Polling Station, that he identified him at the Polling Station, that the Officer questioned the voter also and then made the entries in the tendered votes list and that Exhibit A-54(b) is the signature of the voter. P.W. 46 was the Presiding Officer at the Kangayam Polling Station. He says that Exhibit A-54, the tendered votes list was filled up and signed by him, that the signatures of the voters were all obtained in his presence, and that the particulars contained therein were all furnished by the voters concerned. P.W. 33, the Secretary of the Kangayam Weavers' Co-operative Society Limited proves Exhibits A-73, A-74 and A-75, bonds executed by Seerangan Chettiar, son of Seerangan Chettiar, member No. 410 along with his father and another and proves his signatures, Exhibits A-73(a), A-74(a) and A-75(a) in those documents. Exhibit A-76 contains the signatures of the members who attended the General Body Meeting of the Society on 28th July, 1954, and Exhibit A-76(a) is the signature of Seerangan Chetti (junior) in that document. This is also proved by P.W. 33. P.W. 56, the President of the Society also proves Exhibits A-73, A-74 and A-75 and besides speaks to the fact that there is no other Seerangan Chettiar, son of Seerangan Chettiar amongst Devangars at Kangayam. R.W. 34, the Village Munsif of Kangayam who is deeply interested in the first Respondent, being the brother of his son-in-law first admitted that he knew the voter, then said he did not know him and to a question put by the Court as to what his final answer was, he admitted that he knew him. The suggestion on the side of the petitioner is that this witness being a man of influence at Kangayam is keeping back the voter. The witness would say that he did not see Seerangan Chettiar (junior) at the Polling Station on the day of election. This witness has absolutely no regard for truth, and it was after considerable hesitation and prevarication that he admitted that he knew the voter. The petitioner took all possible steps to secure the attendance of the voter. He first took out summons and then a warrant of arrest, but all that proved futile. The non-examination of Seerangan Chettiar cannot therefore be a matter of adverse inference. The only question is whether it has been satisfactorily proved on the evidence that the person who gave a tendered vote was the voter Seerangan Chettiar. There can be absolutely no doubt that the tenderer was the voter. There is the evidence of P.W. 11, the Karnam who speaks clearly and definitely on the point. A comparison of the signatures, Exhibits A-73(a), A-74(a) and A-75(a) and A-76(a) which are admittedly those of the voter, with Exhibit A-54(b) the signature in the tendered votes list leads to the same conclusion, viz., that Exhibit A-54(b) is the signature of the voter. The evidence of P.W. 56 is sought to be discredited on the ground that according to him the voter came to him on the evening of the day of election and at his request he recommended to the Secretary the issue of yarn to him, out of office hours—a fact shown to be untrue. The Secretary (P.W. 33) examined as R.W. 37 on the side of the first Respondent deposes that there was no issue of yarn to the member on 8th November, 1953. But it is seen from his evidence that the father had been issued yarn on the date. As the father and son are members of one family, the evidence of P.W. 56 is not untrue. We accordingly find that voter No. 315 gave a tendered vote and there being no other Seerangan Chettiar, son of Seerangan Chettiar amongst Devangars at Kangayam it follows that the person who had previously voted in the name of this voter must have personated him. The prior vote which has been marked as Exhibit A-108 is in favour of the first Respondent. It will be excluded from his count and the tendered vote, Exhibit A-114 which is in favour of the petitioner will be added to his total.

Instance No. (17): Soundammal, wife of Savandappa Chettiar, Voter No. 125 in Exhibit A-3 (the marked copy of the Electoral Roll), Polling Station No. 215, Booth No. 2.—P.W. 4, Savundammal gives evidence that when she went to vote in the evening she was told by the Officer that somebody had already voted in her name and that she finally gave a tendered vote. She would say that it was in favour of the Congress candidate, that is the petitioner, and that she affixed her thumb impression to a document. P.W. 11, the Karnam says that he identified her at the Polling Station and speaks to the circumstances in which her tendered vote came to be recorded. Exhibit A-55, the tendered votes list relating to P.W. 4 has not been signed by her, nor does it contain her thumb impression. The explanation of P.W. 45, the Presiding Officer is that he asked the Assistant Presiding Officer to get the signature of the voter but was told by him that the voter had gone away and hence he could not obtain her signature. There is no reason to doubt that P.W. 4 is the real voter, and in the face of the evidence of P.W. 11 that there is no other person of the name of Savundammal whose husband's name is Savundappa Chettiar except P.W. 4, the earlier vote in her

name must have been by an impersonator. That vote, Exhibit A-109 is in favour of the petitioner and it is lost to him.

19. The further question is whether in the absence of the thumb impression of P.W. 4 in Exhibit A-55 the tendered votes list, her vote can be taken into account. It was strenuously contended on behalf of the first Respondent that it cannot be so taken. Rule 29 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 is as follows:—(3) “The name of the constituency, the name of the elector, his serial number in the electoral roll and the name of the polling station to which the roll relates shall be entered in a List in Form 8 which shall bear the heading “Tendered Votes List”. The person tendering such ballot paper shall sign his name or affix his thumb impression against the entry relating to him in that list. The requirement as to the signature or thumb impression of the voter is evidently to provide a means of tracing the tenderer if any need should arise, and to prevent any possible fraud on the part of the person claiming to be the elector. It seems to us that the signature or thumb impression of the voter is a necessary solemnity, the absence of which would vitiate the vote, more especially as the language of the rule stands, the obligation is primarily upon the voter herself. It has been held in the Stepney case, 4 O’ M and H, 43 that if the presiding officer omits to endorse the applicant’s name upon the tendered ballot-paper as required by the rule, the applicant will not lose his vote by reason of the laches of the presiding officer. But in Buckrose Division Case 4 O’ M and H, 115 where the applicant put the tendered ballot paper into the ballot box instead of returning it in accordance with the rule to the presiding officer, the Court held, distinguishing the Stepney case (on the ground that there the fault lay with the presiding officer) that the vote was bad inasmuch as the voter himself disregarded the rule. In foot-note (O) Halsbury’s Laws of England, Hailsham Edition, Volume 12, paragraph 584, it is stated relying on Lyons, Petitioner, 55 I.L.T. 35 that where there is an omission to take the oath, a tendered ballot paper will be disallowed. The present case is a much stronger one as the omission is one on the part of the voter herself. Though the voter would say that her tendered vote was for the petitioner, we find from Exhibit A-115 the tendered ballot-paper that it is in favour of the first Respondent. The vote will not be added.

The remaining three instances of tendered votes may be dealt with together. *Instance No. (18): Valliammal, wife of Sinnappa Goundar, Voter No. 1453 in Exhibit A-25 (the marked copy of the Electoral Roll), Polling Station No. 212, Booth No. 2.*

Instance No. (19): Palaniammal, the wife of Palanisami Goundar, Voter No. 1463 in Exhibit A-25 (the marked copy of the Electoral Roll), Polling Station No. 212, Booth No. 2.

Instance No. 20: Chennimalai Goundar, son of Karuppana Goundar, Voter No. 2205 in Exhibit A-24 (the marked copy of the Electoral Roll), Polling Station No. 211, Booth No. 2.—P.W. 5, Valliammal speaks to her having given a tendered vote. P.W. 6, Palani Ammal says that she also gave a tendered vote because someone had already voted in her name. She further supports P.W. 5. P.W. 10, the Village Munsif identifies P.Ws. 5 and 6 and speaks to the circumstances which led up to their giving tendered votes. P.W. 43, the Assistant Presiding Officer and P.W. 48, the Presiding Officer prove Exhibit A-56, the tendered votes list relating to these two voters. P.W. 34 whose name and her husband’s name are the same as those of P.W. 6 says that she did not vote at the last election.

20. P.W. 7, Sennimalai Goundar speaks to his having given a tendered vote. P.W. 10, the Village Munsif identifies him and supports him. P.W. 54, the Assistant Presiding Officer proves Exhibit A-57, the tendered votes list relating to this voter. In all these three instances, the first Respondent’s Counsel does not dispute that the tenderer was the real voter, but he would say that the petitioner has not proved false personation and the petitioner’s case must therefore fail. There is nothing in the circumstances to suggest or indicate that the persons who applied for voting papers in the names of these three voters could have done so under an honest or mistaken belief, and we are clear that the persons, whoever they were, who gave their votes in the names of these three voters must have done so with a corrupt intention. The original votes in the names of these voters are respectively, Exhibits A-110, A-111 and A-112. They are all in favour of the petitioner and they shall be deducted from his votes. Exhibits A-116, A-117 and A-118 the tendered votes given by these three voters respectively which are in favour of the petitioner will be included in his votes.

21. That concludes a discussion of the instances of personation relied on by the petitioner. We have held that there has been false personation in respect of the votes which, we have decided, should be struck off. In our opinion, the same result would follow even if the case of false personation is not made out; for if the votes are not those of the persons found in the marked copy of the electoral rolls, they could not possibly stand.

22. We shall now turn to the instance of false personation relied on by the first Respondent in his Recriminatory petitions. They are three in number.

Instance No. (1): Govindasami Goundar, son of Ramasami Goundar, Voter No. 1708 in Exhibit B-23 (the marked copy of the Electoral Roll) Polling Station No. 216, Booth No. 3. R.W. 48, Muthusami Goundar, the brother-in-law of the voter would say that Govindasami died in Arpisi before last (October-November 1953) 10 or 15 days before Deepavali and that Semalai, the brother of the deceased went and reported the death to the Village Munsif. R.W. 51, Marappa gives similar evidence. R.W. 58, the Karnam also says that Govindasami died 20 days before the election. All the three witnesses state that the mother of Govindasami died the next day. The first Respondent applied for a copy of the extract from the death register, but could not get it, as the death register could not be traced. The explanation of the Village Munsif is that it was handed over by his predecessor L. T. Ramasami to the Vaccinator and is not therefore available with him. (See Exhibits B-33, 34 and 35). This is clearly unconvincing. L. T. Ramasami is a deputy of the petitioner, and there is room for suspicion that the document might have been suppressed. The evidence of P.W. 68, Nachammal, widow of Govindasami and P.W. 69, Semalai Goundar, his brother is to the effect that Govindasami died in the month of Thai prior to the last (January-February 1954) at Kulitalai. P.W. 69 denies his having gone to the Village Munsif and reported the death of his brother. That no reliance could be placed on the evidence of R.W. 48 as to the chronology of events would be patent from the fact that he would swear that R.W. 45 met him on the day prior to his examination and took him to Ooty, but R.W. 45 was at Ooty the prior day and was examined on that date. R.W. 48 would suggest that P.W. 69 was ill and could not therefore give evidence which certainly is untrue. Though we are not inclined to think that R.W. 58, the Karnam is interested in the first Respondent, yet we consider it unsafe to accept the evidence of R.Ws. 48, 51, and 58 as to the exact date of death when the wife and brother of the voter and more particularly the latter who is said to have conveyed the information to the Village Munsif deny the death before the day of election. We accordingly hold that it has not been satisfactorily proved that the voter was not alive on the day of election. The vote, Exhibit B-42, which is in favour of the petitioner will accordingly stand.

Instance No. (2): Nallammal, wife of Karuppana Goundar, Voter No. 1279, in Exhibit B-25 (the marked copy of the Electoral Roll) Polling Station No. 226, Booth No. 4. R.W. 46, Nachiappa Goundar, a neighbour gives evidence that Nallammal died 4½ years ago in the month of Vaikasi. R.W. 49, the Village Munsif of Moolanur (previously examined as P.W. 41 in the case) proves Exhibit B-31, the extract from the death register and also speaks from personal knowledge to the death of the voter. The petitioner's Advocate does not now dispute that the voter was dead on the day of election. The case was one of false personation. Exhibit B-43 is the vote given in the name of this voter and is in favour of the petitioner. This vote will go.

Instance No. (3): Kumarappa Goundar, son of Ramasami Goundar, Voter No. 1403 in Exhibit B-26 (the marked copy of the Electoral Roll) Polling Station No. 226, Booth No. 3. R.W. 47, Muthappa Goundar, a distant relation of the voter speaks to the fact that Kumarappa died 4½ years ago. R.W. 49 the Village Munsif also speaks to the death of Kumarappa and proves Exhibit B-32, the extract from the death register. The petitioner's Counsel now agrees that the voter must have been dead on the day of election, but his case is that P.W. 70 whose name and father's name are similar to those of the voter has voted and the mark had been wrongly put in the voter's list against his namesake. The first Respondent examined R.W. 61, Chellappa Goundar, the brother of P.W. 70 to say that the latter was ill and did not vote. P.W. 70 would on the other hand assert that he went and voted. P.W. 71, Muthayammal, his mother also supports him. We are inclined to believe P.Ws. 70 and 71, with the result that the vote, Exhibit B-44 which is in favour of the first Respondent will stand.

23. We now turn our attention to the six instances contained in List C appended to the petition which were given up by the petitioner and are now sought to be relied on by the first Respondent. Objection was taken on behalf of the petitioner even before evidence was adduced by the first Respondent in respect of those

instances that it is not open to him to do so as they are not found in his list. The first Respondent would contend that in law he is entitled to do so. The question was reserved for decision at the time of the final order and the evidence was recorded. The petitioner's case as unfolded in the petition is that there was false personation in respect of the voters mentioned in List C and that therefore, they, the real voters, had to give tendered votes. The answer of the first Respondent is quite vague. In paragraph 5 of his written statement, he denies "that there has been false personation in respect of the real voters specified in list C". It is now sought to be contended that impersonation alone was denied and not the genuineness of the voters mentioned in List C. A moments scrutiny would expose the utter untenability of this contention. In respect of the instances of tendered votes relied on by the petitioner, the identity of the tenderers was seriously disputed during trial, and it is only with respect to a few of them that the concession has now been made, in view of the evidence, that the tenderer is the real voter. It is therefore futile to say that the 1st Respondent did not dispute the genuineness of the electors who gave tendered votes. That apart, the 1st Respondent did not in his written statement or Recriminatory case rely on any of the instances of the tendered votes and claim that they should be included in the final scrutiny. The question is whether it is open to the 1st Respondent now to rely on those instances. We think not. A similar question arose for decision in the Finsbury case 4 O' Malley and Hardcastle, 170 at page 173. The Counsel for the respondent desired to attack a vote which was on the petitioner's list, but not on the list of the respondent. He contended that so long as the name of the voter was brought before Court, it was immaterial on which list it appeared. The Court held that the respondent was not entitled to attach votes which did not appear on his list of objections. His Lordship Justice Cave observed as follows:—"I am of opinion that the Respondent is not entitled under rule 7* to give evidence against the validity of any vote which is objected to only in the list of the Petitioner, and not in his own list. It seems to me, looking at the rule, that it applies to both Petitioner and Respondent, and it says, 'no evidence shall be given against the validity of any vote nor upon any head of objection not specified in the list, except by leave of the Court or a Judge! It seems to me to be the natural and convenient construction of the rule to hold that the Petitioner comes prepared to defend all the votes which have been attacked by the Respondent, and the Respondent in turn is ready to defend all the votes which have been attacked by the Petitioner, and neither would be prepared to defend the votes on the other list. If we were to rule the contrary, neither party would be able to give up any case on his own motion, but he would have to be prepared to fight every case and would thus incur a very large amount of expenditure for no useful end. On the other hand, the Court or a Judge has power to allow the evidence to be given upon such terms as to amendment of the list and postponement of the enquiry and so on, as may be ordered. So that, if there is any good reason why it should be done, it will be allowed; but it cannot be done without leave." The respondent then applied for leave to call evidence as to votes on the petitioner's list. The Court refused the application. Sections 83 and 97 of the Act require in the case of petitions and recriminatory cases a statement of the material facts relied on and a list of particulars. It therefore seems to us that the 1st Respondent cannot let in evidence with regard to instances not set out in his pleadings but found in his opponent's list and more particularly as his pleading is at variance with the case now sought to be relied on by him.

24. In view of our above opinion, it may be unnecessary to discuss the evidence relating to those six instances, but here again, we prefer to give our findings on the merits also.

- (1) Chinnasami Goundar son of Muthusami Goundar, Voter No. 156 in Ex. B11 (the marked copy of the Electoral Roll) Polling Station No. 211, Booth No. 1.

R.W. 38, Chinnasami Goundar speaks to his having given a tendered vote and proves Ex. B10, the tendered votes list and his signature therein. R.W.44 (previously examined as P.W.10) the Village Munsif identifies him, speaks to the circumstances in which the tendered vote came to be recorded and proves the signature of R.W. 38 in column 5 of Ex.B10. Though there is some difference as to the age given by the witness and that found in Ex.B11, there is no reason to doubt the identity of the voter. His tendered vote, Ex. B50 is in favour of the 1st Respondent.

- Instance No. (2): Achi Ammal, wife of Ara Goundar, Voter No. 1642 in Ex. B11 (the marked copy of the Electoral Roll) Polling Station No. 212, Booth No. 2.

R.W. 39, the voter says that she gave a tendered vote in favour of the 1st Respondent. R.W. 44, the Village Munsif identifies her, proves Ex. B20, the entry

in the tendered votes list and says that the thumb impression in column 5 thereof is that of R.W.39. Here again, there is no reason to doubt that R.W. 39 is the real voter. Some evidence was let in on the side of the petitioner that P.W. 66, a namesake went and voted at the Election and she is supported by her husband P.W. 67. As the 1st Respondent does not, in any of the six instances of tendered votes relied on by him, seek to displace the original votes, the evidence of these witnesses is not very material at present. Ex. B46 is the tendered vote of Achi Ammal, and it is in favour of the 1st Respondent.

Instance No. (3): Karuppakkal, wife of Sinnappa Goundar, Voter No. 1818 in Ex. A25 (the marked copy of the Electoral Roll), Polling Station No. 212, Booth No. 2.

R.W. 40, the voter speaks to his having given a tendered vote in favour of the 1st Respondent. R.W. 44, the Village Munsif identifies her, proves Ex. B21, the entry in the tendered votes list and says that the thumb impression to be found in column 5 is hers. We are satisfied that R.W. 40 is the real voter and her tendered vote, Ex. B47 is in favour of the 1st Respondent.

Instance No. (4): Chellammal, wife of Veerappa Goundar, Voter No. 1660 in Ex.A25 (the marked copy of the Electoral Roll) Polling Station No. 212, Booth No. 2.

Here again, the evidence consists of the voter and the Village Munsif, R.W. 44. R.W. 41 deposes that she gave a tendered vote in favour of the 1st Respondent and R.W. 44 identifies her. He also proves Ex.B22, the entry relating to her in the tendered votes list and her thumb impression in it. Here again, there is no reason to doubt the identity of R.W. 41. Her tendered vote has been marked as Ex.B48. It is also found to be in favour of the 1st Respondent.

Instance No. (5): Kandasami Chettiar, son of Subbaraya Chettiar, Voter No. 283 in Ex.A2 (the marked copy of the Electoral Roll), Polling Station No. 214, Booth No. 2.

The evidence with regard to this instance consists of R.W. 42, the voter and that of R.W. 34, the Village Munsif. R.W. 42 speaks to the fact that when he went to the Polling Station, he found that somebody had voted in his stead and that therefore he had to give a tendered vote in favour of the 1st Respondent. Ex.B16 is the entry in the tendered votes list signed by him. On the evidence of the voter and that of R.W. 34, it is quite clear that he is the real voter. His tendered vote, Ex.B45 is also in favour of the 1st Respondent.

Instance No. (6) Semalai Goundar, son of Karuppa Goundar, Voter No. 1616 in Ex.A24, (the marked copy of the Electoral Roll), Polling Station No. 211, Booth No. 2.

R.W. 43 gives evidence that he gave a tendered vote in favour of the 1st Respondent. R.W. 44, the Village Munsif identifies him. Ex.B18 is the entry in the tendered votes list. R.W. 44 speaks to it, and says further that the thumb impression in column 5 is that of R.W. 43. On the facts spoken to by these two witnesses, the identity of the voter is established beyond all doubt. It is seen from Ex.B49 his tendered vote that it is also in favour of the 1st Respondent. All these six tendered votes are in favour of the 1st Respondent, and if the 1st Respondent's contention that he can adduce evidence with respect to them be right these six votes will have to be added to his total. In view of our above findings, the following 8 votes relating to instance Nos. 1, 5, 15, 17, 18, 19, 20 and 2 of Recriminatory case will have to be deducted from the petitioner's total and the 5 tendered votes relating to instance Nos. 15, 16, 18, 19 and 20 *supra* will have to be added. 9 votes relating to instance Nos. 3, 4, 6, 7, 9, 10, 11, 14 and 16 will have to be deducted from the 1st Respondent's total. The final result will be that the petitioner will get 14947 votes while the 1st Respondent's total will be 14952. The 1st Respondent will still have a majority of 5 votes and his election cannot therefore be set aside for the reason that the petitioner has obtained a majority of valid votes. We may now record our findings on the issues so far as they related to false personation.

On issue No. 1, we find that there has been false personation in respect of the voters referred to in instance Nos. 1, 3, 4, 5, 6, 7, 9, 10, and 11 (List A), instance Nos. 12 and 13 (List A supplemental) instance No. 14 (List B) and instance Nos. 15 to 20 in List C appended to the petition. (The reference is to the numbers given in the order) but not in respect of the other instances. The latter part of that issue is found in the negative. Issue No. 3 in so far as it relates to false personation is found in the negative. On issue No. 1 in the recriminatory petition, we find that there was false personation of the voter, Nallammal only. Issue Nos. 2 and 3 are found in the negative.

25. Issue No. 4.—The next question which comes up for consideration relates to the publication of Ex.A61, the weekly issue of the newspaper 'Idhi' dated 5th November 1953. The editor is one Pandit Jailani (R.W.11). That the journal had a very chequered career and was not published regularly every week would appear from the evidence of the editor himself. The case of the petitioner is that it was revived at the time of the election and made use of by the 1st respondent to make a vile and malicious attack on him. R.W.11 Pandit Jailani would state that the 1st respondent had nothing to do with the issue and that he alone was responsible for printing and publishing it. P.W. 58, the Manager of the Royal Press, Coimbatore where the weekly was printed says that at the time R.W. 11 gave the order for printing Ex.A.61 there was with him a gentleman whose name, he was told by R.W. 11, was Palaniswami Gounder. That certainly is not legal evidence, and does not prove that the 1st respondent accompanied R.W. 11 when he gave the order for printing the issue of the 'Idhi' in question. That Ex.A61 contains statements of facts with regard to the personal character and conduct of the petitioner which its author could not have believed to be true and that the statements are likely to prejudice the petitioner's chances at the election are not disputed by the 1st respondent's learned counsel. A bare reading of the evidence of R.W. 11 would convince one that the allegations have all been made recklessly without the slightest attempt to verify their truth and that Ex.A61 is just the type of publication which is hit at by Section 123(5) of the Act. The only question is whether the 1st respondent or his agent had anything to do, directly or otherwise, with its publication. The petitioner has adduced evidence regarding its publication at various places within the constituency. P.W. 13 Subbien, P.W. 29 Imam Sahib, P.W. 31 Chinnasami Chettiar and P.W. 40 A. S. Ramasami, all speak to its publication at Kangayam on the eve of the election. The petitioner's advocate himself does not rely on the evidence of P.W. 13 and we may therefore leave that out of consideration. P.W. 29 speaks to distribution by a boy whose name he first mentions as Balakrishnan and then corrects into Balasubramanian. He was the agent of the congress party at the bye-election and was besides the polling agent of the petitioner at the Kangayam Polling Station; yet he says that he did not tell the petitioner about the distribution. P.W. 31 and P.W. 40 say that Balasubramanian and Muthuswamy Gounder, the paternal uncle of the 1st respondent went about, along with others, distributing copies of Ex.A61. P.W. 31 did not mention the matter to the petitioner. P.W. 40 admits that he told the petitioner in detail about it as to who all distributed it and when. If this were true the petitioner could have given full particulars at least as to the distribution at Kangayam but he has not done so. P.W. 40, whatever feelings he may entertain against congressmen in general, has a pronounced antipathy against the 1st respondent. Ex.B3 is a notice issued in his name also and it calls upon the voters not to exercise their franchise in favour of the 1st respondent. This witness's explanation that it was issued without his authority cannot be accepted for a moment. It again appears that his brother and R.W. 34 the brother of the 1st respondent's son-in-law were rival candidates for the office of V. M. and that the latter got the better of it. This must certainly have left some bitterness behind though the witness would not admit it. P.W. 31 has his tea-shop in the building owned by P.W. 40's father. In the circumstances, we are not able to place any reliance on the evidence of P.Ws. 29, 31 and 40. As against this, we have the evidence of R.W. 6, Shanmugha Vadivel, R.W. 10 Subramaniam and R.W. 13 Perumal Chettiar that Balasubramanian and Muthuswamy Gounder never distributed copies of Ex.A.61 at Kangayam. R.W. 34 the V.M. says that neither he nor any one else did so. The evidence of these witnesses is equally interested and unconvincing and if we hold that publication by 1st respondent or his agents at Kangayam or elsewhere is not made out it is because of the improbabilities in, and the interested nature of, the petitioner's evidence and not by reason of our acceptance of the evidence on the side of the 1st respondent.

26. P.W. 39 Sivanamalai Gounder a resident of Akilandapuram speaks to the distribution of Ex.A61 by the 1st respondent on the Saturday prior to the election. He is a relation of P.W. 40. He says that the distribution of Ex. A61 was so well known that there was no necessity for him to tell the petitioner about it; yet the petitioner has not given details thereof either in his petition or later. As against this we have the evidence of R.W. 36 Nallappa Gounder that no one distributed copies of Ex. A61 in his village. We are unable to accept the evidence of P.W. 39.

27. P.W. 38 Ponnuswami Gounder lives at Agastyalingampalayam. He states that R.W. 34 the V.M. came to him on the afternoon of 7th November 1953 along with R.W. 45 Chinnasami, the brother of the 1st Respondent, gave him a copy of Ex. A61 and sought his help to distribute the copies. This is denied by R.W. 34 and R.W. 45. R.W. 27 Pattaya Gounder, a resident of that village, supports them. P.W. 38 was manager in the milk depot of the Kongu Velalar Union of which the petitioner is the Managing Director and is at present a salesman in the Cattle Breeding Marketing Society, Kangayam Branch, the President of

which is now a congressman. He has again not informed the petitioner about the distribution. For all these reasons we are not prepared to give credence to his testimony.

28. P.W. 30 the V.M. of Kccranur resides at Rasipalayam. According to him the 1st Respondent came with others to Rasipalayam on the Friday prior to the election and gave him a copy of Ex. A61. He admits that he did not at any time inform the petitioner about it. As against this we have the evidence of R.W. 4 Palanisami Gounder, another resident that there was no such distribution. It is unsafe to accept the solitary testimony of P.W. 30 and come to the conclusion that the 1st Respondent took part in the publication of Ex. A61.

29. The next place we might refer to, is Sangalipalayam. P.W. 53 Muthuswamy Gounder would assert that R.W. 7 Krishnaswamy, the brother of 1st Respondent, distributed copies of Ex. A61 in his village and gave him a copy. He has not informed any one about the distribution. R.W. 7 denies all knowledge of P.W. 53 and the distribution of Ex. A61 by him. R.W. 32 Semalaippa Gounder who lives a few houses off from that of P.W. 53 is clear that no one distributed copies of Ex. A61 at any time in his village. In the circumstances we are unable to place any reliance on the evidence of P.W. 53.

30. The petitioner gives up his case regarding distribution at Valayakkaran Valasu spoken to by P.W. 18 Krishnasami Gounder. This need not therefore detain us. There is then the alleged publication at Elugamvalasu on 6th November 1953 (Friday). P.W. 24, the former V.M. of Ponnivadi says that there was a meeting at the village chavadi at the instance of the 1st Respondent, attended by persons belonging to the various parties, that at the said meeting the 1st Respondent distributed copies of Ex. A61, that he was given a copy by Senapathy Gounder and that Velusami Gounder the village Congress Committee President was also present at the meeting. The witness says further that the petitioner asked him about it a week after the meeting and he told him everything about the distribution except that it was at a meeting. R.W. 12 Palanisami Gounder has been examined on the side of the 1st Respondent to deny the distribution at the chavadi by 1st Respondent and Senapathi. It is strange, if the evidence of P.W. 24 were true, that the petitioner did not give the particulars in his petition or even subsequently. Though the meeting is said to have been largely attended, no other witness has been examined. We are unable therefore to accept the evidence of R.W. 24.

31. It only remains to consider the distribution that is said to have been made at Moolanur. P.W. 23 Subbiah Gounder, P.W. 37 Kandasami Chettiar and P.W. 52 Velumani are the witnesses that speak to this. They all say that one Vanjiappa Gounder who worked on behalf of the 1st Respondent made the distribution a few days before the date of election. Though P.W. 23 met the petitioner the day after the election he did not tell him then or subsequently about it. P.W. 37 and P.W. 52 state that they did not inform any one about it. The reason given by the former is that it was too well known to need mention and that given by the latter is that he was not interested in the matter. It is somewhat surprising that if the distribution was so notorious as P.W. 37 would have it, knowledge of it did not reach the petitioner and he has not been able to mention the details of it in his pleadings. The election office of the petitioner was located in the building of P.W. 23 though he would say that he did not directly let it out and this affords some indication of his interest in the petitioner. Vanjiappa examined as R.W. 9 denies the distribution. R.W. 22 Govindaswamy Gounder, the President of the Moolanur Panchayat Board supports him. In the circumstances, it is not possible to accept the testimony of P.Ws. 23, 37 and 52. There is therefore no satisfactory proof that Ex. A61 was published either by the 1st Respondent or his agents or with their connivance. Issue 4 is found in the negative.

32. *Issue 2 and part of issue No. 3.*—The only remaining charge in the petition relates to the conveyance of voters, to and from the Polling stations, in vehicles. Evidence has been let in by the petitioner that voters were so taken (1) from Kangayam (2) Agastyalingampalayam (3) Pallavarayampalayam (4) Varadappampalayam (5) Sengalipalayam and (6) Elugamvalasu. So far as Varadappampalayam and Elugamvalasu (as to which P.Ws. 13 and 29 give evidence) are concerned, the case was not pressed at the time of arguments by the learned Advocate for the petitioner and does not therefore require to be considered. P.W. 31 and P.W. 40 are the two witnesses who speak to the taking of voters in vehicles at Kangayam. The substance of P.W. 31's evidence is that voters were taken in two cars by the 1st Respondent or his brother and that he saw that from his tea-shop in the bazaar street. He is not able to give particulars of the cars or the voters. He did not inform any one about it and he concludes by saying that he does not know which of the persons taken in cars had votes and which had not. P.W. 40 says that voters were taken by

R.W. 45 Chinnaswamy, the brother of the 1st Respondent in cars, that the car No. is M.D.C. 219 and that Ponnai Chettiar, Ayyavu Chettiar, Raman Chettiar (together with the members of their family) Andiappa Chettiar and Ramasami Chettiar are the voters so taken. The witness states that though he told the petitioner about the distribution of Idhi and he knows that it is wrong to take voters in conveyances, he did not inform the petitioner about it. This is somewhat strange. We have already held in another connection that P.Ws. 31 and 40 are interested witnesses. As against this, we have the evidence of R.W. 6, 10 and 13 who are all residents of Kangayam that voters were not taken in vehicles by the 1st Respondent or his brother. R.W. 13 adds further that he, Kannappa Chettiar, Andiappa and Ayyavu (some of the voters mentioned by P.W. 40) went walking to the polling station and voted. R.W. 45 Chinnasami, the brother of the 1st Respondent denies having taken voters in cars.

33. P.W. 38 says that R.W. 7 Krishnaswamy, brother of the 1st Respondent took him and the other voters in his house, in a car from Agastyalingampalayam to the polling station. He also mentions that his uncle and the members of his family came in the car to vote. He gives the number of the car as '2668'. He says that he did not mention this matter to the petitioner or his agents. We have already held that he is to some extent interested in the petitioner. R.W. 7 denies having taken any voters in cars. R.W. 27 would say that 1st Respondent and his agents did not take the voters in cars and that P.W. 38, his uncle and himself walked to the polling station at Kangayam. R.W. 34, the V. M. gives evidence that voters were not brought in cars to the polling station at Kangayam by 1st Respondent and his agents.

34. P.W. 57 Ramaswamy Gounder a resident of Pallavarayampalayam says that his relations were all taken in a car by R.W. 3 Doraiswamy the son-in-law of the 1st Respondent, that the car was frequently coming to his village to take voters but that he did not go in the car. R.W. 3 denies he ever took any voter in a car. P.W. 57 has not informed any one about it nor has any one questioned him about the matter. It is not explained why he alone did not go in the car. The voters who are said to have gone in the car or any other from that area have not been examined. It is not safe to rely on the solitary testimony of this witness. R.W. 5 Chinnasami Gounder and R.W. 8 Sivanmalai Gounder both of Pallavarayampalayam are positive that no cars came to their village to take voters and that they, P.W. 57 and others travelled in bullock carts to the polling station. There is some discrepancy in their evidence as to whether all the bullock carts returned together or not.

35. P.W. 53 a resident of Sangalipalayam gives evidence that he and the other voters in his family were taken in a car to vote by Nataraja Gounder, an agent of 1st Respondent and that other voters were similarly taken. This witness also did not mention the matter to any one nor did any one ask him about it. None else from Sangalipalayam has been examined on the side of the petitioner and the suggestion is that P.W. 53 is deposing at the instance of Krishnasami Gounder a relation of his who was present in Court and who is the Vice President of the Taluk Congress Committee, Dharapuram. R.W. 32 would assert that Nataraja Gounder did not take voters in cars and that they all either walked or went in their own carriages to the polling station.

36. We are not impressed with the evidence on the side of the petitioner regarding the conveyance of voters. It is not satisfactorily explained why, if the evidence of these witnesses were true, the petitioner was not able to furnish the name of even a single voter who was taken in a vehicle to the polling station. The petitioner relies strongly on the evidence of P.W. 32 Periasami the owner of the Petrol Bunk at Kangayam in support of this part of his case. The witness would state that though cash bills were issued for the purchase of petrol and oil by the 1st Respondent, cash was not paid then and there, that in the bills he would put the initials of the 1st Respondent 'K.G.P.' to indicate that they had to be paid that he had received as loans two sums of Rs. 400 and Rs. 700 prior to 8th November 1953 from R.W. 7 Krishnasami, the brother of R. 1 and that subsequently accounts were settled and a sum of Rs. 500 and odd was paid to him by R.W. 7. The entries at pages 21 and 22 of Ex. A71 the dealers book kept by him which contain the mark, according to the witness, relate to purchases made by the 1st Respondent. The evidence of this witness even if true does not carry us far. The account books of the witness do not mention the receipts of Rs. 400 and Rs. 700 or the later payment of Rs. 500 and odd. The bills are all cash bills, and beyond the assertion of the witness, there is nothing of a reliable character in the documentary evidence to indicate that the 1st Respondent did not pay cash for his purchases or the total extent thereof. Be that as it may. We are not concerned with the purchases except on 8th November 1953 or with the procedure adopted with respect to them. On 8th November

1953, the petitioner's Counsel would state, the 1st Respondent has purchased 86 gallons of petrol and he would therefore ask us to infer that a large quantity thereof should have been consumed in taking voters in cars to the polling station. The inference suggested is somewhat far-fetched. For one thing, there is no satisfactory proof that the bills, the total of which make up 86 gallons, all relate to purchases made by the 1st Respondent. That part, even if the 1st Respondent had purchased that quantity of petrol, it does not necessarily follow that the 1st Respondent used motor vehicles for conveying electors to the polling stations. The petrol might well have been consumed during the journeys made in the vehicles by the 1st Respondent and his agents whilst touring round the constituency on the day of election. At the worst, the circumstance can give rise only to a suspicion, and suspicion, as has been repeatedly observed, is no substitute for proof. It is therefore not satisfactorily made out that the 1st Respondent or his agents were guilty of the corrupt practice of hiring or procuring vehicles for the conveyance of voters. Issue No. 2 and that apart of issue No. 3 which relates to this matter are found in the negative. 1/

37. The rest of the issues in the main petition do not call for much discussion. Issues 5, 6 and 7 are found in the negative. We have already held in our order in I.A. 4 of 54 that the petition is not defective for want of necessary particulars. Additional issue No. 9 is accordingly found in the negative and additional issue No. 10, in the affirmative. The verification has since been amended and additional issue No. 11 does not therefore require any finding. On issue No. 8, it is held that the petitioner is not entitled to any relief.

38. We now turn our attention to the remaining charges in the recriminatory case—the subject-matter of issues 4, 5 and 6.

39. Issue 4 (*Recriminatory case*).—Ex. B37 is the pamphlet complained of by K. C. Ratnasami and K. C. Subbayan, two of the brothers of the 1st Respondent (we refer to the parties according as they are ranged in the main petition) are its authors and it purports to bear their signatures. That it is in the main an attack on the conduct and character of the 1st Respondent does not admit of any doubt and is not disputed by the petitioner's Counsel. In more places than one it is said that the 1st Respondent has defrauded the two brothers. There is a suggestion that he has not behaved properly towards Harijan ladies seeking his help for appointment as teachers. There is then the assertion that he sold decayed and worm-eaten grains in his ration shop and thus deceived the poor. That these statements are untrue is spoken to by R.W. 7 Krishnasami, another brother of the 1st Respondent and is not contradicted by the petitioner. That they are calculated to prejudice him in the eyes of the electorate does not admit of any doubt. The only question is whether the petitioner or his agents or any one acting with their connivance were responsible for the publication.

40. R.W. 55, S. M. Palanisami Goundar says that he worked on behalf of the petitioner during the election, that on Friday (6-11-1953) prior to the day of election the petitioner came to him at 3 p.m. with a bundle of the notice Ex. B37, that they distributed some notices at Sanarpalayam, that they then went to the coffee shop of R.W. 53, Balakrishna Aiyar at Moolanur, met R.W. 52 Ganesa Mudaliar who has his tailoring shop in front of the hotel and gave him a bundle of the notices for distribution. He distributed some copies in the coffee Hotel itself. R.W. 52 and R.W. 53 give evidence to a similar effect. R.W. 52 and 55 are then said to have gone with the petitioner to the election office of the Congress Party at Moolanur and met there R.W. 54, Kannan, R.W. 56 Appusami Aiyar and one Lakshmanan Pillai and arranged for the distribution of the notice at Moolanur and the outlying villages. R.W. 52, R.W. 54, R.W. 55 and R.W. 56 say that R.W. 54 was asked to distribute the notices in the villages while R.W. 56 was entrusted with the task of distribution in the Kannivadi market. Both these witnesses state that they so distributed. All these persons are said to have worked on behalf of the Congress during the election. R.W. 52 and R.W. 54 were admittedly the polling agents of the petitioner at Moolanur as will appear from Ex. B38 and B39. P.W. 72 Mani Aiyar, P.W. 73, Palaniappa Mudaliar and P.W. 74, Sheikh Mohamed Rowther all state on the other hand that there was no distribution of Ex. B37 at any time in their village, Moolanur. The Congress Election Office P.W. 73 says, was located in his shop. The evidence of R.Ws. 52 to 56 is sought to be challenged on the ground that the notices were printed and delivered only on 7th November 1953 and there could therefore have been no distribution on the earlier date. P.W. 77 Sadasivam chettiar, the proprietor of the press where Ex. B37 was printed says that the order was given on 6th November 1953 and the printed notices were delivered to K. G. Subbayan at 5 p.m. on 7th November 1953. Ex. A88 the entry in the work register book, Ex. A89 the entry in the delivery book, Ex. A90, the counterfoil of the bill and Ex. A91 the entry in the cash book all

relate to the printing of Ex. B37 and support him. Though it is possible that some of the entries could have been interpolated or added to, it is not possible to manipulate others and there could be no doubt that the delivery was on 7th November 1953 as noted in the registers. But that does not clinch the question. The delivery might well have been made in instalments as was the order for printing and P.W. 77 admits that piecemeal delivery would be made through rarely. He would make an exception regarding election notices. On the other hand, one should think that it is in this class of cases that the parties would be in a hurry, and take delivery piecemeal. We are therefore not prepared to conclude on this ground that there could have been no distribution of Ex. B37 on 6th November 1953. But we are not impressed with the evidence on the side of the 1st Respondent. R.W. 55 appears to belong to a different party the Dravida Munnetra Kazhagam. (*vide* the evidence of P.W. 73) and Sx. A87 though he would not admit it and it is most unlikely that he would have worked on behalf of the petitioner, a Congressman. There is some discrepancy regarding the giving of the notice Ex. B37 to R.W. 53. There are as many versions as there are witnesses. R.W. 55 would say that R.W. 52 gave it. R.W. 53 would ascribe the act to the petitioner himself. R.W. 52 say in one portion of his evidence that the petitioner gave the copy to R.W. 53 and in another that he himself did so. Again with regard to the persons who participated in the distribution at Moolanur there is considerable variation. According to R.W. 54 and R.W. 55, they along with the petitioner and R.W. 52 distributed. R.W. 52 on the other hand omits R.W. 54. R.W. 56 would mention Lakshmana Pillai also as one of the persons who took part in the distribution. R.W. 55 admits that S. K. Ramaswami Goundar and R.W. 22 Govindasami Goundar of Sinnakkampatti and S. M. Ramasami Gounder are his agents. It is seen from the evidence of R.W. 53 that S. K. Ramasami Goundar stood as an Independent candidate during the recent District Board election, that R.W. 22 and S. M. Ramasami Gounder worked for him and that the petitioner's son-in-law Nataraja Gounder worked on behalf of the Congress candidate. R.W. 54 admits he was the election agent of Sinnakkampatti, Ramasami Gounder. It is this sharp cleavage of opinion during the recent District Board election that has led R.W. 55 and the Moolanur group of witnesses to side with the 1st Respondent, probably to some extent under the influence of R.W. 22 the Panchayat Board President of Moolanur. Otherwise it is inexplicable how all these witnesses who pretend to have interested themselves on behalf of the petitioner at the time of election deserted him at their first contact with the 1st Respondent a few months ago and were prepared to help him with their narration of events. It is significant that all these particulars were not available to the 1st Respondent earlier. There is no mention of any of the persons that made the distribution in recriminatory petition. We are not prepared to give credence to the evidence of R.Ws. 52 to 56.

41. There is next the evidence of R.W. 60 Periasami Gounder who says that on the day prior to the election Rajamani Gounder, Balasamudrampudur Govindasami Gounder, Pachapalayam Govindasami Gounder and two others came to the Pappini Ammankoil where the villagers had assembled, distributed the notice Ex. B37 and asked them to vote for the petitioner. This witness was the polling agent of the petitioner at Pappini. P.W. 75 Govindasami Gounder denies having worked for the Congress and the distribution of Ex. B37 either by himself or in conjunction with others. R.W. 60 would first say that he did not tell R1 about the distribution of Ex. B37; later he contradicts himself and states that he did. No other person has been examined to prove the distribution though according to the witness it was done on a large scale.

42. R.W. 64 Karuppayyan deposes that the petitioner, Ratnasami (brother of 1st Respondent) and Chenniappan came in a car to his shop at Thottiyappatti on the day previous to the election, that Chenniappan got down from the car, that the petitioner and Ratnasami gave about 50 copies of Ex. B37 to him for distribution, that he gave half the number to the witness and asked him to distribute them and that he did so. The witness further states that when he went to Kangayam he found that the notice had been distributed there also. P.W. 59 Chenniappan gives evidence contra and says that he had not seen copies of Ex. B37 previously and did not hand them over to R.W. 64 or any other. R.W. 64 admits that it suggested itself to him that it was not proper to distribute the notices, as they were defamatory of the 1st respondent but his naive explanation is that he did so because otherwise his customers would think ill of him.

43. R.W. 65 Chinnandi states that on the day prior to the election the petitioner with some others came in a car to his village of Kalleri and gave some notices similar to Ex. B37 to one Sadaya Moopan; that the latter gave all the notices to him and that he distributed them to those that came to his coffee hotel. He is sought to be contradicted by P.W. 64 an alleged partner of his. R.W. 65

says he was aware that it was wrong to distribute defamatory notices of the type of Ex. B37 and when he was asked why he still did so, he would not answer that question but would simply repeat that he distributed them. R.W. 66 Kuttianna Goundar gives evidence that the petitioner along with others came to him cycle shop at Manthoppudur, gave him 10 or 20 notices and asked him to distribute them. His evidence is innocuous as he does not say what those notices are.

44. R.W. 67 Ramasami Goundar a resident of Sullivalasu swears that on the day prior to the election the petitioner gave him as well as some others a notice like Ex. B37. He says he cannot read properly. On his own showing his memory is faulty for he first says that he met the 1st Respondent only in Court after the election and then states that he saw him a month after the election.

45. It will be seen that though according to the 1st Respondent there was wide circulation only a single witness is examined to prove the distribution in each of the above 5 villages. Such evidence is easily procured and the witnesses do not impress us. There is much force in the suggestion that they are speaking on behalf of the 1st Respondent at the instance of the respective village **Munsifs who are deeply interested in him, being his close relations.** It is important to note that in respect of none of the villages the 1st Respondent has furnished any particulars regarding the distribution. We are unable in the circumstances to believe the evidence adduced by the 1st Respondent as regards the publication of Ex. B37. Issue No. 4 (Recriminatory case) is found in the negative.

46. *Issues 5 and 6 (Recriminatory case).*—R.W. 57, Nachi Mudaliar, R.W. 59 Palani Moopan, R.W. 62, Nalli Mudaliar and R.W. 63, Nachimuthu Goundar have been examined by the 1st Respondent to prove that L. T. Ramasami Goundar, the acting village Munsif of Kadayur worked for the petitioner, exercised undue influence on and intimidated the voters of Alapithagoundanpudur. R.W. 57 and 63 merely say that Ramasami Goundar asked them to vote for the petitioner. R.W. 62 goes a step further and says that Ramasami Goundar said that he was the V. M. and that he (the witness) should vote for the petitioner. R.W. 59 is the only witness that would fully support the 1st Respondent's case. According to him, the Village Munsif threatened to refuse his licence and to beat him and drive him away from the village if he did not vote for the petitioner. P.W. 76 Karuppa Goundar says that L. T. Ramasami Goundar never came to the village with either the petitioner or his son. R.W. 57 had admittedly to depend for the supply of water till recently on 1st Respondent's uncle's generosity. The evidence of R.W. 62 makes it clear that he and R.W. 57 have borrowed from the Co-operative Society at Goundanpalayam of which 1st Respondent is the President and that the loans were sanctioned by the 1st Respondent. R.W. 63 was cultivating the lands of the 1st Respondent's family as lessee though he would not admit that he is now doing so. R.W. 59 holds a licence for manufacture of palmyrah jaggery and that includes the field S. No. 205A belonging to the 1st Respondent (*vide* the evidence of P.W. 65, Ex. A86 the application of R.W. 59 for grant of licence and Ex. A92 certified copy of chitta extract of Kadayur village), but he would deny the same. R.W. 57 freely admits that the petitioner, the hereditary V. M. of Kadayur has greater influence than L. T. Ramasami Goundar and it is therefore highly improbable that he would have sought the help of the latter. The evidence on the side of the 1st Respondent is highly interested and artificial and we are unable to believe the same. Issues 5 and 6 are found in the negative.

47. In view of our conclusion that the election of the 1st Respondent cannot be set aside, issue No. 7 in the Recriminatory case does not call for any finding. Had the petitioner obtained the majority of valid votes, we would have held on this issue that there is nothing to disentitle him to the declaration prayed for by him, *viz.*, that he has been duly elected.

48. It only remains to consider the question of costs. Though costs should normally follow the event, in our opinion, this is not a fit case for costs. As regards personation, the petitioner's case has practically been accepted though the result has not always been favourable to him. The 1st Respondent though called upon to admit facts would not do so, but he put the petitioner to strict proof of them. In law the costs incurred in proving the same should be borne by the 1st Respondent. Besides, the 1st Respondent has in the main failed to substantiate his recriminatory case. For all these reasons we think that the proper order to make is that each party should bear his respective costs.

49. In the result, the election petition is dismissed, but in the circumstances without costs. (Vakil's fee Rs. 1000). We find that none of the corrupt practices alleged by either side has been proved except false personation by third parties. It is not possible to name the offenders as they are not known.

Pronounced in open Court, this the 15th day of Nov. 1955.

(Sd.) E. ANTONY LOBO, *Chairman.*

(Sd.) R. RAJAGOPALA AIYAR, *Member.*

(Sd.) K. NANJUNDIAH, *Member.*

[No. 82/1/54/14528.]

By Order,

P. S. SUBRAMANIAN, *Secy.*